

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512



December 23, 2004

Lisa G. Urick
San Diego Gas & Electric Company
555 West Fifth Street, Suite 1400
Los Angeles, CA 90013-1011

RE: APPLICATION FOR DESIGNATION OF CONFIDENTIALITY
Retail Electricity Price Forecast Data, Docket No. 04-IEP-1

Ms. Urick:

On November 30, 2004, you filed Electricity Retail Price Forecast Forms 1.a, 1.b, and 1.c with the California Energy Commission (Energy Commission) for use in the 2005 Integrated Energy Policy Report. As part of that filing, you are seeking a designation of confidentiality.

Your Application for Confidentiality (Application) states, in part:

. . . these forms provide commercially sensitive information. Under the Public Records Act, Govt. [sic] Code Section [sic] 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed.

Your Application provides three grounds for this claim:

First, these forms all contain demand and price forecast information that, although it is aggregated on an annual basis, relatively easily allows a party to calculate SDG&E's current energy supply needs on a disaggregated (monthly and hourly) basis. By thus calculating SDG&E's "residual net short" position, potential suppliers achieve a competitive advantage.... Second, to publicly release this information would allow market participants to have access to competitively sensitive information that would normally not be available to them.... Third, SDG&E is concerned that parties not have available to them information that they might rely upon inappropriately to their detriment.

The California Public Records Act allows for non-disclosure of trade secrets. (Gov. Code, § 6254(k), Evid. Code, § 1060.) The California Courts have traditionally used the following definition of trade secret:

a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . . (*Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207-208, 96 Cal.Rptr.

493, 500-501, from the Restatement of Torts, vol. 4, sec. 757, comment b, p. 5.)

Your Application does not make a reasonable argument under the Energy Commission's regulations for classifying the information you have submitted as confidential since it does not fall within the definition of trade secret. SDG&E justifies its request on the basis of the ability of a reviewer of forms 1.a, 1.b, and 1.c to be able to discern SDG&E's residual net short position, and thus influence market purchases to the harm of SDG&E's bundled service ratepayers. The material SDG&E has provided does not include summaries of generation produced by SDG&E-owned resources or purchased under various regulatory mechanisms. Thus there is no revelation of any supply-demand balance in the data provided and no indications of SDG&E's supply needs. Therefore, SDG&E's justification for confidentiality is not consistent with the data actually provided; the information you have provided is neither commercially sensitive nor would it provide your competitors with a competitive advantage if made public. (Gov. Code, § 6254 (k); Cal. Code Regs., tit. 20, § 2505.) Consequently, your Application to have the submitted information deemed confidential is denied.

The procedures and criteria for appealing this decision are set forth in the California Code of Regulations, title 20, section 2505. Be advised that an appeal of this decision, to deny your Application, must be filed within fourteen days from my decision. If you have any further questions regarding this decision, please contact Fernando De Leon, Senior Staff Counsel, at (916) 654-4873.

Sincerely,

ROBERT L. THERKELSEN
Executive Director

cc: Docket Office